

OFFICE OF THE U.S. TRADE REPRESENTATIVE

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TRADE POLICY STAFF COMMITTEE

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PUBLIC HEARINGS

for

WTO - SERVICES

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WEDNESDAY

NOVEMBER 6, 2002

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The Committee met in Rooms 1 and 2 in the Office of the U.S. Trade Representative, 1724 F Street, N.W., Washington, D.C., at 10:00 a.m., Carmen Suro-Bredie, Chair, presiding.

PRESENT

CARMEN SURO-BREDIE	USTR, Chair
BERNARD ASCHER	USTR
CAROL BALASSA	USTR
RICHARD BROWN	USITC
PETER COLLINS	USTR
RONALD DOBSON	Department of Labor
JOE FREEDMAN	Environmental Protection Agency
SARA HAGIGH	Department of Commerce
MARK LINSOTT	USTR
DENNIS MARVICH	Department of Transportation
GLORIA BLUE	USTR, Executive Secretary

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I-N-D-E-X

Opening Statement by Chair Suro-Bredie.....	3
Opening Remarks by Peter Collins, USTR.....	5
Testimony by Professor Laurel Terry.....	9
Testimony by Linda Schmid.....	29
Testimony by David Spence.....	42
Testimony by David Waskow.....	57
Testimony by Ray Sander.....	72

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P-R-O-C-E-E-D-I-N-G-S

(10:00 a.m.)

CHAIR SURO-BREDIE: The hearing will come to order. This hearing is being conducted by the Trade Policy Staff Committee, an interagency body chaired by the Office of the U.S. Trade Representative.

In addition to USTR, there are representatives from the Departments of Commerce, Transportation, Labor, the Environmental Protection Agency and the U.S. International Trade Commission. Members of the USTR staff working on the services negotiations also are present.

The subject of this hearing is Market Access for Services in the DOHA Development Agenda Negotiations in the World Trade Organization.

The TPSC has sought comments regarding the subject matter of these negotiations in three earlier solicitations. Please see my opening remarks for the references. Supplementary or new submissions on these topics are welcome, but comments submitted pursuant to an earlier notice need not be resubmitted.

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1 For services, topics for negotiating
2 objectives include removal or reduction of barriers to
3 U.S. services exports under existing GATS disciplines;
4 establishment of new GATS disciplines to ensure
5 effective market access, e.g., proposed disciplines on
6 domestic regulations on services, possibly addressing
7 transparency and necessity; and clarification of
8 sectoral definitions in the Agreement. The United
9 States submitted its initial requests for specific
10 commitments on July 1, 2002, and intends to submit its
11 initial offer by the scheduled deadline of March 31,
12 2003.

13 Services sectors under consideration in
14 the negotiations include business services, computer
15 and related services, well, including professional and
16 related services such as legal, accounting, auditing
17 and bookkeeping, taxation, medical, dental,
18 veterinary, engineering, architectural and urban
19 planning services, computer and related services,
20 research and development services, real estate
21 services, rental and leasing services and advertising
22 and managements services. It will also cover

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1 communication services, construction and related
2 engineering services, distribution services, education
3 and training services, environmental services, energy
4 services, financial services including insurance and
5 insurance-related services, banking and securities
6 services, health-related and social services, tourism
7 and travel-related services, recreational, cultural
8 and sporting services and transport services.

9 Now, I will turn to Peter Collins, the
10 Deputy Assistant U.S. Trade Representative for
11 Services who will give opening remarks after which the
12 panel will introduce themselves and then we will hear
13 from the first witness. Thank you for your attendant.

14 MR. COLLINS: Thank you. WTO-Services
15 negotiations began in early 2000 pursuant to the so-
16 called built-in agenda contained in Article 19 of the
17 General Agreement on Trade in Services. The
18 preparatory period produced some 120 negotiating
19 proposals submitted by over 40 countries. The United
20 States has submitted 16 negotiating proposals, most
21 recently last month, on issues related to small and
22 medium sized business.

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1 The United States negotiating proposals
2 are on the USTR website. All of the negotiating
3 proposals are on the WTO's website. They stated
4 general objectives for the negotiations and raised
5 issues for consideration in the negotiations.

6 The DOHA Ministerial Declaration gave
7 impetus to the WTO-Services negotiations by
8 establishing three needed benchmark dates. For the
9 overall end for the negotiation, which is the same for
10 all DOHA topics, as well as dates for submission,
11 initial requests and initial offers.

12 The United States and other WTO members
13 met the first deadline, June 30, 2002. The United
14 States has posted a summary of our requests on the
15 USTR website as have some other WTO_members. In the
16 July and October GATS Rounds in Geneva, the United
17 States met with a large number of countries
18 bilaterally to present our request, respond to
19 questions and to do the same in the case of requests
20 made to us.

21 We will continue in December and in early
22 2003 to hold these bilateral meetings. By March 31,

1 2003, all WTO members must submit initial offers. As
2 was just noted, previous Federal Register notices
3 requesting comments on objective, previous Federal
4 Register notices requested comments on objectives in
5 the WTO-Services negotiations. This Federal Register
6 notice is different from the previous ones, it also
7 has asked for comments under commitments the United
8 States might undertake in addition to proposed
9 objectives in foreign markets.

10 We will soon begin preparing our draft
11 offer in the negotiations and will follow the mandated
12 statutory process supplemented where appropriate by
13 consultation with responsible federal and state bodies
14 as was the case with preparation of our requests.
15 That is the process includes review and clearance by
16 TPSC agencies followed by review by USTR statutory
17 advisors, for example, the Industry Secretary Advisory
18 Committees, Trade and Environment Policy Advisory
19 Committee, the Labor Advisory Committee and the
20 Intergovernmental Policy Advisory Committee, as well
21 as relevant congressional bodies.

22 In parallel with the WTO-Services

1 negotiations, the work continues on issues remaining
2 from the Uruguay Round including so-called rules
3 issues in four areas, for domestic regulation,
4 subsidies, safeguards and government procurement, as
5 well as classification issues, that is how to describe
6 service sectors and activities for purposes of
7 scheduling commitments in the WTO. Thank you.

8 CHAIR SURO-BREDIE: Thank you. Now the
9 panel will introduce themselves and I'll review the
10 rules of testimony and then we'll take our first
11 witness. Starting from the left, please.

12 MS. BALASSA: I'm Carol Balassa at USTR.

13 MR. ASCHER: Bernie Ascher, Director of
14 Service Industry Affairs at USTR.

15 MS. HAGIGH: I'm Sara Hagigh from the
16 Department of Commerce Office of Service Industries.

17 MR. MARVICH: Dennis Marvich from the
18 Department of Transportation, Office of International
19 Transportation and Trade.

20 CHAIR SURO-BREDIE: I'm Carmen Suro-
21 Bredie, I chair the Debate Policy Staff Committee at
22 USTR.

1 MR. COLLINS: Peter Collins, Deputy
2 Assistant USTR for Services.

3 MR. DOBSON: I'm Ron Dobson. I'm with the
4 Labor Department.

5 MR. BROWN: Richard Brown, Services
6 Industry Division, U.S. International Trade
7 Commission.

8 MR. FREEDMAN: Joe Freedman, Environmental
9 Protection Agency.

10 CHAIR SURO-BREDIE: Thank you. If I might
11 just review for the witnesses what was in the Federal
12 Register notice. We would like to hear five minutes
13 of testimony from the witness and then we will follow
14 it with questions. Thank you.

15 Our first witness is Laurel Terry,
16 Professor, Dickinson School of Law, Penn State
17 University. Thank you for coming.

18 PROFESSOR TERRY: As you heard, my name is
19 Laurel Terry. I'm a professor at Penn State Dickinson
20 School of Law. My background is in legal ethics which
21 I've taught for 16 years and I've been working
22 recently with respect to global regulation of lawyers

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1 issues. Thank you for the opportunity to come today.

2 My written testimony was divided into
3 three sections. I identified what I saw as the major
4 issues for the legal services sector in the DOHA
5 Development Agenda. I commented about the
6 consultation process generally and offered some
7 specific suggestions. And third, I specified two
8 substantive issues about which I thought additional
9 consultation might be useful.

10 What I thought I'd do today was highlight
11 the key points with respect to these three topics. I
12 definitely want to leave time for questions but I'd be
13 happy to address questions beyond my testimony to the
14 extent that I know things, in particular, developments
15 at the International Bar Association level and the
16 OACD is going to be doing some things with the legal
17 services sector.

18 I'm going to take the topics of my
19 testimony slightly out of order. I'm going to go one,
20 three, two. With respect to identification of issues
21 with respect to legal services, obviously you're
22 concerned with issues related to outbound U.S.

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1 lawyers, issues related to inbound foreign lawyers,
2 issues related to the work of the working party on
3 domestic regulation and its development of disciplines
4 and whether or not to adapt the disciplines for the
5 accountancy sector to cover legal services.

6 The fourth issue that I identified was
7 whether or not to use Australia's proposed definition
8 of legal services and classification in the new
9 negotiations. The fifth issue I identified had to do
10 with a procedure and consultation and the sixth issue
11 has to do with a dispute or disagreement that I've
12 noted with respect to mode three and mode four and
13 whether lawyers whose staff branch offices in the host
14 country should be scheduled using mode three or
15 whether they should be scheduled using mode four. And
16 I think there maybe a disagreement between the U.S.
17 and the EU in particular on that issue.

18 I think to date the USTR has mostly heard
19 the perspectives of those who are primarily interested
20 in outbound U.S. legal services, which makes sense.
21 That's the group that has a financial interest at
22 stake, that's easiest to organize. The point that I

1 wanted to make in identifying these issues is that I
2 think they're all important and I think it's important
3 for the USTR not to lose sight of all six of these
4 issues even though some of them may not be
5 particularly stressed in the submissions that you
6 received from CSI and interested law firms, U.S. law
7 firms.

8 The third issue that I had included in my
9 testimony had to do with specific substantive issues
10 about which I think you might want solicit more input.
11 And the two issues were the definition of legal
12 services, the classification issue, and also the issue
13 of disciplines on domestic regulation. And I know
14 that the USTR consults with the legal services
15 representative on ISAC 13 but to the extent that
16 there's a procedure that would permit you to do this,
17 I'd like to encourage you to perhaps do it more
18 formally with the organized bar entities that are
19 available. And I'll talk a little bit more about that
20 later.

21 I was embarrassed to discover that when I
22 was preparing for this testimony that, in fact, I had

1 received an e-mail from Peter Ehrendthof at some point
2 mentioning the Australia classification paper and
3 asking me for input. I was one of a group of people
4 to whom he circulated it and I didn't reply at the
5 time because I was busy, I wasn't focused on that
6 issue, didn't know very much. When I saw the Federal
7 Register notice for this hearing, one of the things
8 that I did was send it to everyone I could think of to
9 get the word out and one of the responses that I got
10 was from a lawyer who said, who is involved in
11 alternative dispute resolution, active in the ABA
12 section, and says when I read the Australian
13 definition, it's not obvious to me whether lawyers who
14 act as neutrals as opposed to lawyers who represent
15 clients in ADR proceedings are covered. And I think
16 that should be clarified.

17 And I think that's an example of the type
18 of issue that if there is broader consultation might
19 be flushed out and that it would be healthy. And I
20 think to the extent, for example, that just a letter
21 could be sent to maybe Peter Ehrendthof as
22 representative of the ABA, something to trigger more

1 formal circulation than maybe happens currently.

2 Which leads me to the second issue that I
3 discussed in my testimony which was the consultation
4 process and some suggestions. To put it bluntly, I
5 don't think the consultation process has worked very
6 well yet for legal services. I think most U.S.
7 lawyers, from my perspective as somebody who works
8 quite a bit with domestic regulation, have no idea
9 that the GATS exist and most bars have not
10 participated in any debates or policy developments.
11 And even when there is a relevant policy, for example,
12 the recent work of the ABA Commission on multi-
13 jurisdictional practice, recommendations eight and
14 nine dealt with both establishment and temporary
15 practice by foreign lawyers in the U.S. and that was
16 adopted as policy in August, 2002.

17 I think most people within the bar didn't
18 realize the relationship of that policy to GATS. It's
19 really being decided as an independent issue and with
20 no link up. And I think in this regard, U.S. lawyers
21 and U.S. bar organizations such as the ABA, have been
22 much slower to respond than lawyers in some other

1 countries. The Canadian Bar Association, for example,
2 and Federation of Law Societies of Canada have been
3 much more on the ball in terms of notifying their
4 members, having committees, having consultations,
5 preparing reports.

6 The Law Society of England and Wales is
7 much more sophisticated and knowledgeable and having
8 consultations about this issue than U.S. lawyers are.
9 I think there's a whole variety of reasons. That
10 could be a whole other hearing as to why that's true.
11 I think it has to do with the structure of the ABA and
12 the organization and staffing levels and policy
13 decisions but I think the fact is that very few U.S.
14 lawyers or U.S. legal organizations even know this is
15 happening.

16 My thesis is that broader consultation is
17 better for everybody. I think it's better for the
18 USTR. I think it's going to make your job easier.
19 It's just one concrete example, when I sent out of
20 these list serves with the Federal Register notice for
21 this, I think one of the things you were going to get
22 by Friday is something from Professor Carol Silver who

1 will point out corrections and changes in the U.S.
2 schedules specific commitments with respect to legal
3 services for foreign legal consultant rules. She'll
4 tell you where, in fact, we are more liberal than
5 what's stated in the schedule.

6 That seems to me that would be enormously
7 useful for you as you do your negotiations. And there
8 may be all sorts of people out there with specialized
9 information that if there's broader consultations,
10 that information is going to work it's way back to you
11 and make your job easier. I also think it's good for
12 U.S. lawyers and the legal profession and clients and
13 the whole society to have more dialogue about this
14 issue and to have a consensus building developed
15 through discussion.

16 I also think to the extent that the goal
17 is expanded trade for U.S. lawyers because that helps
18 U.S. clients, it creates an infrastructure for goods
19 and services, I think that that is more likely to
20 happen if the rules for inbound foreign lawyers to the
21 U.S. are liberalized. And I don't think it's
22 reasonable to expect that to happen without dialogue.

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1 The decision makers who regulate lawyers take their
2 jobs very seriously and they're used to having a lot
3 of policy debates and a lot of dialogue and that needs
4 to happen and that really hasn't started yet.

5 And I think I would sometimes fault the
6 ABA section of International Law and Practice because
7 sometimes they say, well, this is good for outbound
8 U.S. lawyers, as if that's the entire argument with
9 respect to the inbound foreign lawyers as opposed to
10 talking about the issue on its merits and why it would
11 be good for U.S. clients or not good for U.S. clients
12 if that's what you think, to have foreign lawyers
13 coming in. And I don't think that's really happened
14 yet and I think those sorts of involvement,
15 particularly the state supreme courts, needs to
16 happen.

17 So if you agree with my thesis that
18 broader consultation regarding legal services is
19 better, how do you accomplish it. Well, I had two
20 suggestions in my testimony. One was as part of the
21 outreach office of the USTR, you have people with whom
22 you are speaking in the states but I talked to my

1 state's representative and she's not used to dealing
2 with issues that have to be decided by the judiciary
3 as regulation of lawyers are. She had no idea what
4 she would do when she found out about the request.

5 So maybe what you do is you add the
6 Conference of Chief Justices to all your lists of
7 contacts, of people with whom you communicate, about
8 the requests. In addition, there's an entity called
9 the ABA Center for Professional Responsibility that
10 has a fabulous infrastructure. They have coordinated
11 extensive debates, policy debates, within the U.S.
12 about the legal profession starting in about 1997 with
13 the debate that just concluded about what our ethics
14 rules should say. And they've managed these wonderful
15 websites that not only have good information but are
16 very accessible.

17 And I think they've finally seen the light
18 that GATS exists and that it's relevant and that maybe
19 they should pay attention and they've agreed to now
20 have a web page dedicated to GATS information. So to
21 the extent that the USTR can facilitate them helping
22 with communication either by sending electronic copies

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1 or through whatever, I think that would be extremely
2 useful and I think everybody would benefit from it.
3 And I just think having some brainstorming sessions
4 about how to have broader consultations would be
5 useful.

6 And I'll give you two small examples to
7 close. I was asked earlier this year by the National
8 Organization of Bar Examiners who are the people who
9 control admissions which is obviously very relevant,
10 to write -- should you ask, I have two examples.

11 CHAIR SURO-BREDIE: Thank you very much.
12 Thank you very much for your testimony and for your
13 written position that accompanied it. We'll turn now
14 to Mr. Ascher of USTR. The first question?

15 MR. ASCHER: Thank you. I also thank you
16 for your testimony and we welcome your suggestions
17 about increasing consultations for the U.S. legal
18 profession. I note that in your written statement, it
19 recognizes our current efforts to consult with
20 representatives of the American Bar Association and
21 other organizations and that the ABA is represented on
22 one of our industry sector advisory committees. This

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1 is part of our advisory system created by the Congress
2 for trade negotiations.

3 I have a couple of questions here. Could
4 you elaborate on two of the suggestions in your
5 statement, first, what do you have in mind concerning
6 an ABA website that could serve as a forum through
7 which USTR could solicit information and opinions.
8 And second, with respect to communicating with the
9 Conference of Chief Justices, and I know you've given
10 us their website address in your statement, could you
11 tell us how this conference operates, how often it
12 meets, whether it has staff and in what way it deals
13 with international issues?

14 PROFESSOR TERRY; I'll deal with the
15 second issue first. I know virtually nothing about
16 the Conference of Chief Justices. I know that it is
17 an organization of the chief justices of the supreme
18 courts in each state and virtually every state except
19 California, I think it is the supreme court that has
20 the exclusive power to issue rules that regulate
21 lawyers.

22 I, among my many e-mails I've been sending

1 lately, I sent an e-mail to the Conference of Chief
2 Justices saying, hey, this exists, there are going to
3 be requests coming in asking for changes in your
4 state's rules, maybe you should learn something about
5 this. If you ever want a CLE, I'm happy to do it, I'm
6 happy to suggest other people to do it. And they
7 indicated they are interested in this. There is at
8 least two staff people that work for it because I've
9 been in contact with them. I don't know how much
10 broader it is. I know they are having their semi-
11 annual meeting in January in Williamsburg. So that
12 might be an opportunity for the USTR to speak before
13 the offers go out with the people who are going to
14 change rules or not change rules as the case may be
15 with respect to domestic U.S. rules for foreign
16 lawyers.

17 Turning to the second part of your
18 question, unless anybody has follow-up on the
19 Conference of Chief Justices?

20 CHAIR SURO-BREDIE: Could you, by chance,
21 send us the specific information?

22 PROFESSOR TERRY: Sure, the contact

1 information?

2 CHAIR SURO-BREDIE: Yes.

3 PROFESSOR TERRY: I'd be happy to.

4 CHAIR SURO-BREDIE: To Gloria Blue.

5 PROFESSOR TERRY: Sure.

6 CHAIR SURO-BREDIE: At USTR. So it would
7 be G. Blue is the --

8 PROFESSOR TERRY: I have her e-mail.

9 CHAIR SURO-BREDIE: You have that?

10 PROFESSOR TERRY: For the web page that I
11 am suggesting, I would say go steal the Canadian Bar
12 Association's web page. It's wonderful. They've got
13 on there the GATS, they've got on there everybody's
14 negotiating proposal with respect to legal services.
15 So that's on the order of what, ten or so. They've
16 got on there the disciplines for the accountancy
17 sector. They have on there the consultation papers
18 written by both the Canadian Bar Association and the
19 Federation of Law Societies of Canada. I mean, if I
20 had technical know-how, I would build the web page
21 myself. It would be wonderful PR but I don't have
22 time to maintain it and they do.

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1 But I'm happy to work with them and give
2 them ideas. I think they would love to work with
3 anybody at the USTR for suggestions about what should
4 be there. But it's just a very user friendly web
5 page. In addition, on two different occasions, they
6 have a link called Emerging Professional Issues. On
7 two different occasions, they've had GATS as one of
8 their emerging professional issues dating from 1999
9 and one of them was sort of a Q and A presentation
10 about the GATS and legal services and at the bottom it
11 was send us your comments. And just, you know, click
12 submit and there it is. So that's the sort of thing
13 I had in mind.

14 And, again, I think up until now the
15 Center for Professional Responsibility, which much
16 more than the section of international law, the Center
17 for Professional Responsibility controls domestic
18 regulation issues. They're the people you want to be
19 talking to. And they haven't seen that it was
20 relevant and I think a combination of the Federal
21 Register notice, a combination of the ABA Multi-
22 Jurisdictional Practice Commission's mandate being

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1 expanded to include international law and then having
2 recommendations they did not, nine adopted, a
3 combination of me yacking at them for two years, they
4 finally now see this as important. And I've talked
5 with the director and she's told me that they're now
6 willing to host this and sponsor it and devote staff
7 time to it.

8 MR. ASCHER: Okay, another question, in
9 your statement, you referred to the issue of inbound
10 lawyers and we hear quite often from lawyers and law
11 firms particularly when they have, when there are
12 adverse effects in foreign countries. We've not heard
13 any complaints from U.S. lawyers about competition in
14 the U.S. market and I'd be interested if you have any
15 evidence that inbound lawyers constitute a threat to
16 U.S. lawyers or U.S. clients. Now, in your statement
17 just a few minutes ago, you mentioned liberalizing the
18 regulations for inbound lawyers and that lawyers, U.S.
19 lawyers, need to know that that's a good thing. Could
20 you reconcile all that for me, please?

21 PROFESSOR TERRY: I'll try. My statement
22 is much more process oriented than actually giving you

1 my views on all of these things. As a general matter,
2 I favor liberalization rather than not liberalization.
3 My personal view is that it's good for clients, it's
4 good for lawyers, it's good for the society. But my
5 main thing I care about is having dialogue about this.
6 I, personally, have not seen any evidence of harm. I
7 can tell you, though, that it's very much a concern
8 among U.S. lawyers. And I'll give you two concrete
9 examples.

10 I am a member of the Pennsylvania Legal
11 Ethics Committee. I was chair for about nine years.
12 Pennsylvania is one of the states that has not adopted
13 the ABA Model Foreign Legal Consultant Rule. I think
14 part of the reason is there is no good entity to go to
15 say adopt this. So I decided, okay, I'll introduce it
16 into the ethics committee and it can work its way up
17 through the PBA and work it's way to the Pennsylvania
18 Supreme Court. And I thought I had a lot of
19 credibility in this group having been chair for so
20 many years and getting along well with people. It
21 went down in flames. I mean, there was no actual vote
22 but there was incredible hostility.

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1 Now, in my view, most of it appeared to be
2 motivated by protectionist concerns rather than client
3 protection concerns but I think one of the things you
4 do by having a public debate on all of this is you
5 flush out the dialogue and you make people embarrassed
6 to make protectionist comments. They have to start
7 talking in terms of whether they can justify it in
8 terms of the client's interests, in terms of the
9 system's interest. So I think, again, I think there
10 is some resistance out there and I'll leave it with
11 the one example.

12 MR. ASCHER: Okay, do I have time for one
13 more?

14 CHAIR SURO-BREDIE: Of course.

15 MR. ASCHER: Okay, in your statement, you
16 say you're unaware of any public information on U.S.
17 requests on WTO negotiations. I'd like to let you
18 know that our press release of July 1, which is posted
19 on our website, contains an eight page summary of the
20 services request of other countries including legal
21 services. I'd appreciate hearing your views, later if
22 necessary, on whether you find this summary useful.

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1 PROFESSOR TERRY: Okay, can I take two
2 minutes or so. I haven't read the summary. I haven't
3 found the summary on your web page. I will tell you
4 what I have done. I mentioned that I wrote this
5 article in May for the Bar Examiner Magazine about
6 what the GATS is, sort of Q and A. It was taken from
7 the executive summary to the IBA GATS handbook that I
8 wrote.

9 I was asked to do another article that I
10 was writing in September to go in the November issue.
11 Originally, I thought it was going to be here's sort
12 of an idea of what the requests are with respect to
13 legal services so that you can start thinking about
14 whether you would consider making these changes. And,
15 first of all, I didn't know very much about the
16 process. I didn't know that they were considered
17 confidential government documents until I talked to
18 Don Morgan and I would mention as an aside the U.K.
19 consultation has a nice section on how all the process
20 works, what's confidential, what isn't. I didn't know
21 any of that.

22 I then talked to Peter Ehrendthof who is

1 the ISAC 13 who hadn't seen them and then he sort of
2 ran around trying to look for them and then he went
3 out of the country. So he hadn't seen them and so
4 what I wanted to do was give the bar examiners a rough
5 outline, maybe not even in as much detail as what the
6 Guardian newspaper leaked which was very specific
7 saying this state changed this rule which had been
8 published in my earlier article to give people an idea
9 of what might be out there. I just wanted some
10 outlines of what had been asked for and I asked Peter
11 and Peter didn't know and couldn't tell me.

12 And so, and this is as of about two weeks
13 ago, I would say is probably the most recent because
14 he went to China, I think, and then he was going to
15 come back and go to the reading room and look at it.
16 And I haven't gotten his follow-up e-mail. But as of
17 mid, late September, maybe early October, he couldn't
18 tell me to put general outlines in this article to go
19 out.

20 CHAIR SURO-BREDIE: Thank you very much.
21 Our next witness will be Linda Schmid, Vice President,
22 Coalition of Service Industries. Thank you for

1 coming.

2 MS. SCHMID: Good morning. Thank you for
3 this opportunity to testify on behalf of the Coalition
4 of Service Industries on services negotiations in the
5 WTO. CSI is comprised of U.S. service companies and
6 trade associations seeking market access in all modes
7 of supply in all negotiating forums. We have prepared
8 a compendium of services priorities for WTO
9 negotiations, negotiations with countries acceding to
10 the WTO, bilateral agreements, and for use in trade
11 forums such as APEC. We offer this to negotiators and
12 other members of the Trade Policy Committee as a ready
13 reference to the trade liberalization priorities of
14 the many sectors represented in CSI's membership.

15 These negotiating priorities reflect the
16 tremendous economic importance of services in the U.S.
17 and in the world economy. Services are essential
18 inputs into the production of virtually all products.
19 The price and quality of services influence cost and
20 productivity of all other sectors in an economy
21 including manufacturing and including agriculture.
22 Thus when liberalized and made more efficient,

1 services have a strong multiplier effect in the
2 economy.

3 As of 2000, total measurable world trade
4 in services stood at some 2.3 trillion, or over a
5 third of total trade in goods and services. In the
6 U.S. in 2000, the current account reported a surplus
7 on trade in private services of 78 billion, which
8 offset 17.2 percent of the 452.2 billion merchandise
9 trade deficit. Services jobs account for 80 percent
10 of U.S. private sector employment, or 82.9 million
11 jobs. These service sector employees earn on average
12 32,865 dollars per year, which is 500 dollars more
13 than the average salary of a manufacturing employee.
14 In fact, for all economies, the greater the share of
15 services in employment, the greater GNP per capita.

16 For developing countries, the average
17 share of services in GDP stood at 50 percent in 1999.
18 Services exports from developing countries doubled
19 during the '90s, rising from U.S. 147 billion to 347
20 billion. Trade in services such as travel and
21 tourism, communications, construction, business and
22 cultural services are a significant source of foreign

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1 currency for developing countries. Regional services
2 trade is also growing as demonstrated by Kenya's
3 significant export of professional services and South
4 Africa's export of telecommunications services.
5 Developing countries are also gaining in knowledge-
6 based, labor-intensive services such as data
7 processing, call centers and software services.

8 We believe CSI's services priorities are
9 in the interests of our trading partners. One of our
10 main priorities in negotiations in all forums is the
11 framework for Transparency in Services, which focuses
12 on improving the processes for developing domestic
13 regulation. In my testimony, I will describe the
14 framework and identify priorities for temporary entry
15 of natural persons, electronic commerce, acquired
16 rights. I will also highlight priorities for
17 telecommunications, financial services, advertising,
18 audiovisual, computer and related services, education,
19 environmental, legal, maritime and tourism if I can
20 get to them.

21 But first transparency. CSI very strongly
22 believes that trade agreements must contain cross-

1 cutting disciplines to promote greater regulatory
2 transparency for services. Regulatory practice in the
3 services sector has developed unevenly and often at
4 odds with the market access and national treatment
5 commitments of WTO members. As a result, the
6 experience of industry in both emerging and developed
7 markets has been increasingly one of frustration with
8 regulatory processes.

9 A transparent and fair regulatory system
10 is a precondition for the liberalization of services.
11 All current trade negotiations provide an opportunity
12 to build on the transparency disciplines obtained
13 during the Uruguay Round negotiations. A review of
14 prior achievements suggest that the best negotiating
15 approach will be to fortify the GATS rules regarding
16 transparency for all sectors and, as needed, to
17 supplement these general rules with additional and/or
18 special rules to govern particular sectors.

19 CSI has proposed a framework for achieving
20 transparency. Trade agreements should contain
21 stronger disciplines to promote greater transparency
22 across the board for all services. In particular

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1 services sectors, sectorial agreements or scheduling
2 can be used to lay out additional transparency
3 requirements for that sector, including broader
4 regulatory reform as necessary and appropriate. Some
5 sectors may need little supplementation while others
6 may need many special rules tailored to that sector.
7 This suggested approach will allow negotiators to
8 respond flexibly to the particular needs of each
9 sector while at the same time building on the
10 transparency disciplines that apply across all
11 sectors.

12 General transparency commitments should be
13 sought in standard-setting, the Regulatory Application
14 Process and Judicial, Arbitral or Administrative
15 Tribunals.

16 Another high priority for service
17 industries, and this hits every sector, is the
18 temporary movement of key personnel. This is a high
19 priority for U.S. services firms and it's also a high
20 priority for developing countries services firms. CSI
21 believes that WTO members should provide for the entry
22 of key business personnel such as managers and highly

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1 skilled technicians through a special visa that allows
2 for expeditious processing and entry to perform
3 temporary work assignments. A new special visa may be
4 necessary to achieve this objective since there is no
5 visa category in the U.S., nor in most other
6 countries, that covers both intra-corporate and work
7 for clients or customers in another country where
8 there is no affiliate office of the parent company.

9 Another very high priority for service
10 companies is electronic commerce because many service
11 companies either now provide their services
12 electronically or will do so in the future. In
13 addition to the WTO, all trade agreements including
14 accession agreements should include provisions that
15 address electronic commerce issues affecting goods and
16 services, as well as binding principles that support
17 the maintenance of open markets for electronic
18 commerce.

19 The agreement should ensure maximum
20 liberalization in those services that constitute the
21 infrastructure of the Internet, facilitate e-commerce
22 and are traded electronically. Agreements should also

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1 provide binding principles with commitments to avoid
2 the creation of any unnecessary barriers to e-commerce
3 and provide products delivered electronically no less
4 favorable treatment than that for similar products
5 delivered in physical forms.

6 Finally, we have another interest which is
7 acquired rights. Somewhat technical but essentially
8 what we're asking for is that trade agreements contain
9 acquired rights provisions. They should provide,
10 service providers already established in the market
11 should not suffer a loss of rights due to insufficient
12 or graduated commitments in the final outcome of a
13 negotiation. To ensure commercially meaningful
14 agreements, USTR should require inclusion of an
15 acquired rights provision which stipulates that the
16 conditions of ownership, management, operation,
17 juridical form, and scope of activities should not be
18 made less so than at the existing date of the
19 countries affirmation of the agreement or accession to
20 the WTO.

21 In conclusion, CSI also has negotiating
22 priorities for telecommunications, for environmental

1 services that I'd just like to make one point on that.
2 We work very hard to reach out to environmental
3 service providers in the United States and we've found
4 that a lot of them don't have government affairs
5 offices in Washington, D.C. But we did find that like
6 with many other services providers, they have similar
7 concerns. Movement of personnel, they want to be able
8 to move their people in and out of developing
9 countries where they may be doing work. Tools of the
10 trade, they'd like to be able to bring in their tools
11 with them without customs duties and take them out.

12 Also, like many other service providers,
13 environmental service organizations or firms, do not
14 want to face discrimination on the means by which they
15 choose to deliver a service. So, in a sense, they're
16 looking for technological neutrality. So it shouldn't
17 matter how they decide to deliver the service.

18 In conclusion, I'd like to highlight the
19 fact that we have put together a very detailed
20 compendium with a Model Schedule for insurance
21 providers, a Model Schedule for legal services which
22 we've consulted with international law firms and we

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1 hope that USTR and all of you will have an opportunity
2 to look at it and we hope that it will be shared with
3 those folks who are, for example, negotiating
4 accession of Russia to the WTO and also the folks who
5 are working on some quasi-trade issues in APEC. Thank
6 you very much.

7 CHAIR SURO-BREDIE: Thank you very much.
8 We will make a note to be sure to share that with
9 them. For our first question then, we'll turn to
10 Peter Collins from USTR.

11 MR. COLLINS: Thank you. First point,
12 introductory comments, your written testimony deals
13 with some issues not addressed by the WTO-Service
14 negotiations, for example, tariffs and so we will pass
15 the information on to those at USTR responsible for
16 those other parts of the WTO negotiations.

17 The first question is, in your written
18 testimony, you state that the priorities you describe
19 apply to the WTO negotiations, WTO accession
20 negotiations, bilateral negotiations and other trade
21 forums such as APEC. But we would be interested in
22 hearing how you would describe your priorities with

1 the WTO-Services negotiations versus those other
2 negotiations where services commitments are being
3 negotiated, especially bilateral or regional through
4 trade agreements.

5 MS. SCHMID: I would say that the first
6 thought in putting together this compendium is for
7 WTO-Services negotiations. So you will see specific
8 references to the GATS, for example, and for
9 particular negotiating approaches. And then what we
10 did was go through some of the text and see how it
11 could be applicable to bilateral trade agreements or
12 accession to the WTO. Acquired rights is an example
13 of that. I mean, it will require some thought as to
14 how an acquired rights provision would fit into the
15 WTO-Services negotiations. We certainly know how it
16 would be done in an accession agreement.

17 And, having just returned for Quito, we
18 did find that, for example, we are more specific in
19 this document on classification issues because it's
20 clear how classification will be used in the WTO
21 negotiations. However, it's not so clear how
22 classification will be dealt with in the FTAA. So

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1 there are nuances in the text but the primary focus is
2 WTO-Services negotiation.

3 CHAIR SURO-BREDIE: Our next question will
4 be asked by the Department of Commerce.

5 MS. HAGIGH: On transparency, you propose
6 obtaining both cross sectoral and sector-specific
7 disciplines. Could you provide more information on
8 sectors for which CSI believes that these specific
9 disciplines are appropriate.

10 You also state that in some sectors, the
11 transparency disciplines should address regulatory
12 reform. Could you please elaborate.

13 MS. SCHMID: On your first question with
14 respect to specific sectors, I would say that we have
15 asked for specific transparency provisions in
16 financial services which would mean banking,
17 securities, there's a special paper that we include in
18 here from the securities industry association and also
19 we have a Model Schedule on insurance that includes
20 transparency provisions. Also, energy services is
21 seeking transparency provisions. So that's with
22 reference to our members who have said outright we

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1 want some specific transparency disciplines. There
2 may be other sectors where it will be applicable.

3 And then your second question, sir, I
4 didn't catch it.

5 MS. HAGIGH: You state that in some
6 sectors the transparency disciplines should address
7 regulatory reform and we're interested in your
8 elaboration of that idea.

9 MS. SCHMID: I would imagine that that
10 would speak to the way in which regulatory reform was
11 implemented or administered. That if it's the case,
12 that there are regulatory reform initiatives, that
13 those initiatives are made public, that there's
14 opportunity to comment on them and that if there's
15 disputes, that there's an opportunity to participate
16 in those disputes.

17 CHAIR SURO-BREDIE: Thank you. Our next
18 question will be asked by Mr. Dobson of the Department
19 of Labor.

20 MR. DOBSON: Yes, thank you. We'd like to
21 understand your suggestions for temporary movement of
22 key personnel. You advocate that a new admission

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1 category should be created to meet the needs of
2 persons whom you've described in your statement. We'd
3 like to know, are these people receiving remuneration
4 from a source within the admitting country in all
5 cases or should it vary case by case. And also, could
6 you give us a specific case example where business was
7 lost due to delays in processing these requests.

8 MR. SCHMID: Okay. The idea for a special
9 visa would be that service providers, people with
10 special knowledge of a particular service industry,
11 they have unique and specialized knowledge. They may
12 not have a professional degree, let's say, in a
13 communications technology for example, but they have
14 specialized knowledge that they've learned on the job,
15 should be put into this particular category. And
16 we've provided a definition for that.

17 The idea would be that these people
18 whether, if they're coming from the United States and
19 they're going abroad, they are, of course, paid by the
20 folks in the United States and it may be that there's
21 no establishment in the third country. The person is
22 just moving there to deliver a service, is just, I

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1 should say, temporarily traveling there to deliver a
2 particular service and then returning home. And this
3 is an important issue for the United States and other
4 countries.

5 And then the second part of your question
6 was, oh, an example of firms that have lost money
7 because of processing. The examples that I have
8 heard, frankly, and this is something that came up in
9 Quito and the FTA discussions were principally from
10 foreign firms who had a very difficult time acquiring
11 visas for entry for their business personnel into the
12 United States.

13 CHAIR SURO-BREDIE: Are these H visas that
14 they're having difficulty getting?

15 MS. SCHMID: It would be a business visa,
16 I don't know the specific.

17 CHAIR SURO-BREDIE: Thank you very much.
18 Our next witness is David Spence, Senior Counsel for
19 Federal Express and Chairman, International Trade
20 Subcommittee of the Air Courier Conference of America.
21 Welcome, Mr. Spence.

22 MR. SPENCE: Thank you. Good morning. I

1 am David Spence, Senior Counsel for Federal Express.
2 I'm here today in my capacity as the chairman of the
3 International Trade Subcommittee of the Air Courier
4 Conference of America, International. ACCA is the
5 trade association of the U.S. express delivery
6 services industry. I am also accompanied by Selina
7 Jackson, Public Affairs Manager for International
8 Trade for United Parcel Service.

9 We're here today to discuss ACCA's
10 objectives for the GATS negotiations. Specifically,
11 ACCA is seeking language that appropriately defines
12 express delivery services to include the full scope of
13 services provided. Unfortunately, under the present
14 nomenclature, we are considered part of courier
15 services, a classification that does not adequately
16 describe our services. Furthermore, due to an anomaly
17 in the CPC schedule, we are disadvantaged because
18 courier services does not include any services
19 provided by national postal administrations, even if
20 they are identical to the services we provide. This
21 establishes an artificial distinction based upon the
22 provider of the service and is unacceptable to express

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1 operators who are seeking a level playing field with
2 postal administrations, our major competitor.

3 ACCA is also seeking specific commitments
4 under the GATS in services provided in connection with
5 the efficient supply of express delivery services. In
6 its recent request covering express delivery services,
7 USTR reportedly submitted a checklist of these related
8 services, including ground transportation,
9 warehousing, customs brokering, inventory management,
10 telecommunications, and other logistics-related
11 services. Specific commitments in these services are
12 critical because of the broad scope of issues that
13 affects our industry and the fact that barriers in any
14 one of these areas could, depending upon the
15 circumstances, affect the efficient supply of express
16 delivery services. Accordingly, specific commitments
17 in all the sectors listed in USTR's checklist,
18 including express delivery services, are necessary to
19 establish certainty with regard to existing market
20 access and to establish an efficient global delivery
21 infrastructure.

22 ACCA is also seeking trade facilitation

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1 provisions that expedite treatment of express delivery
2 shipments. We recognize that trade facilitation
3 negotiations would fall outside the GATS negotiations
4 but we want to highlight that such negotiations are a
5 critical part of our objectives for the DOHA round.
6 Frankly, our service is not enhanced if we are able to
7 ship goods from the United States to a foreign port in
8 six hours but then the goods sit at the port, awaiting
9 clearance, for six days.

10 Many of these objectives are addressed in
11 the U.S. proposal on express delivery services
12 presented to the WTO in December, 2000, and it's our
13 understanding in the U.S. request on express delivery
14 services issued July 1, 2002. We appreciate the close
15 working relationship we have had with USTR and other
16 U.S. agencies in developing these proposals, and in
17 seeking a compromise between the U.S. and European
18 Union positions on express delivery services.

19 However, we are here today to focus on one
20 critical objective of our industry that thus far has
21 not been addressed by the U.S. government.
22 Effectively addressing cross subsidization of express

1 delivery services by those with government-granted
2 special or exclusive rights. This is a crucial market
3 access issue for our industry. When any entity,
4 including a postal administration, chooses to provide
5 express delivery services to their customers, they
6 should be governed by the same rules and market
7 economies as other providers of express delivery
8 services. However, this is not currently the
9 situation in key markets. Instead, we face postal
10 administrations that use profits they derive from
11 government-granted monopoly operations to cross
12 subsidize their express delivery service operation.
13 This constitutes an unfair competitive advantage that
14 directly limits the market access of otherwise
15 competitive private companies. In addition, other
16 countries in which such cross subsidization is not
17 currently a problem may consider endorsing this
18 behavior in the future if this issue is not
19 effectively addressed.

20 We are aware that certain U.S. government
21 agencies believe that only anti-competitive cross
22 subsidization should be addressed in trade agreements.

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1 Such a provision would place a very difficult burden
2 of proof on companies seeking relief. Securing relief
3 would also require a difficult and, we believe,
4 inappropriate showing of an adverse impact on market
5 competition. In sum, market access would be
6 detrimentally affected and relief would be quite
7 difficult to achieve. Therefore, in the unique area
8 of express delivery services, we believe that the
9 ability to prevent the distortive effects of cross
10 subsidization should not be conditioned on whether
11 such effects are subjectively considered anti-
12 competitive.

13 Again, this issue is of particular
14 importance and relevance to the express delivery
15 services industry and we believe it must be addressed
16 in order to ensure a level playing field between
17 private operators and those benefiting from
18 government-granted monopoly operations. We urge the
19 U.S. government to advance proposals in Geneva that
20 would prohibit cross subsidization by postal
21 administrations to their express delivery services.

22 Thank you for your time and attention. We

1 would now be happy to answer any questions you might
2 have.

3 CHAIR SURO-BREDIE: Thank you very much,
4 Mr. Spence. Our first question will be asked by Peter
5 Collins of USTR.

6 MR. COLLINS: Thank you. You make the
7 point that express delivery and courier services are
8 different. Could you please elaborate on those
9 differences?

10 MR. SPENCE: Well, we get asked this
11 question quite a bit. Under the current
12 classification of courier services covers everything
13 from Federal Express or UPS. Federal Express has 660
14 aircraft, worldwide hub structure. It also covers
15 bicycle messengers. It also covers private postal
16 administrations. It also covers inter-city couriers.
17 It covers the gamut and we don't feel that we are
18 what's known as courier service.

19 When you think of a courier service, you
20 think of a package being given maybe to a bicycle
21 messenger or being given to some courier who drops it
22 at point B. It then may go onto an onboard courier at

1 point B to go to point C and then it goes to another
2 person at point C and finally to point D. Express
3 delivery services, we handle from point A to point B.
4 When the customer pays, and they pay a higher price,
5 they don't care how the package gets there. We handle
6 every service that goes with them from point A to
7 point B, just the company and its representatives.

8 We track and trace. We have
9 administrative control. We do all these things that
10 customers, frankly, are paying the price for. So they
11 know the difference in what is the courier, as I've
12 described it, and what is the express delivery
13 service.

14 And in the definition of express delivery
15 service that we've been working with the U.S.
16 government on, there are three elements. One is the
17 general transport pickup delivery. Then there's
18 tracking and tracing and then there's administrative
19 control throughout the process. If a company is
20 meeting that definition, then they're performing
21 express delivery services. If they're not, then they
22 may be couriers, they may be doing something else but

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1 they're not doing express delivery.

2 CHAIR SURO-BREDIE: Under your definition
3 then of express delivery service, do postal express
4 delivery services meet those three conditions?

5 MR. SPENCE: Yes, the key here is that the
6 postal administration is performing those services or
7 performing what's in that definition and they are
8 doing express delivery service. As I explained in our
9 testimony, the way it's set up, it's the only area we
10 understand under the CPC or W/120, where it's set up
11 to discriminate. It's set up to who is supplying the
12 service. If it's a postal service, it's performed by
13 a national postal administration. Everything else is
14 a courier service.

15 So what could end up happening and what
16 we're seeing around the world is the postal service
17 could be performing express delivery but only because
18 they're a postal service, they would be classified as
19 postals, only because they're postal administration
20 they'd be classified as postal service and that sets
21 up problems down the road if we ever wanted to take a
22 case because they're not like services, where that

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1 would be an argument.

2 So what we're trying to do and what we've
3 worked with the U.S. government on is creating this
4 classification that would apply to all operators. It
5 goes to the service provided, not who is providing the
6 service.

7 CHAIR SURO-BREDIE: Thank you. Does
8 anybody have question on that particular issue? Yes,
9 USITC?

10 MR. BROWN: Yes, USITC, Richard Brown.
11 Are you aware of any countries where postal services
12 are not the preserve of a government entity?

13 MR. SPENCE: I'm sorry?

14 MR. BROWN: Are you aware of any country
15 in which postal services are not the preserve of a
16 government entity. In other words, there are postal
17 services that are provided by private sector
18 companies.

19 MR. SPENCE: Well, there have been
20 instances where, I think Argentina has privatized
21 their post. I mean, there are examples but they're
22 few and far between. Mostly they are national

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1 government-granted monopolies, government-granted
2 organizations.

3 MR. BROWN: Thank you.

4 CHAIR SURO-BREDIE: Mr. Ascher from USTR.

5 MR. ASCHER: You discussed the importance
6 of establishing GATS disciplines to address cross
7 subsidization in the area of express delivery not
8 limited to anti-competitive and you cite the unique
9 nature of express delivery services. Could you
10 provide, elaborate and give some information on what
11 makes this sector unique compared with others.

12 MR. SPENCE: I don't want to hog all the
13 time.

14 MS. JACKSON: One situation that does make
15 our industry unique is that we are competing with
16 foreign government monopolies. And what we've been
17 told by certain agencies of the U.S. government is
18 that in order to prove that cross subsidization is
19 anti-competitive, we would have to prove harm to
20 consumers.

21 Now, in the short term, that would be very
22 difficult to prove. Clearly in the long term,

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1 consumers would be harmed if a postal monopoly is
2 getting subsidies from their domestic government and
3 using those to drive prices to a point where they go
4 below the cost of doing business and drive companies
5 like UPS or Fedex out of business. So in the long
6 term, that would be harm to consumers. But in the
7 short term, and certainly in the term we're talking
8 about trying to improve our situation, it's almost
9 impossible to prove.

10 Some queries have come to us, don't you
11 companies cross subsidize from one area of your
12 business that might be less profitable than the other
13 area of our business. And clearly, the answer is yes,
14 we do cross subsidize but we are not cross subsidizing
15 with funds that are gained from a government entity.
16 And that's a clear difference.

17 MR. SPENCE: I would just add, and it was
18 in the testimony, is that we have to play by the
19 market rules. I mean, we're a private business and
20 government-backed monopolies don't have to play by
21 those rules. I mean, simply everything we're trying
22 to do here is just level the playing field, make it

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1 competitive. I mean, we don't mind competitors coming
2 into the market. But we want it to be done on a fair
3 basis and that's all we're looking for.

4 CHAIR SURO-BREDIE: On that same point, we
5 have a question to them, return to the Department of
6 Transportation.

7 MR. MARVICH: Thanks for your statement.
8 I'd like to follow up on the part of your statement
9 where you mentioned that there were differences
10 between the United States and European Union
11 approaches to express delivery in the WTO GATS
12 negotiation. Can you elaborate a bit on this?

13 MR. SPENCE: Yes, where the EU or EC
14 really, what's driving this, in their proposal, they
15 have what they call handling of postal items. And
16 then within that handling of postal items, they have
17 eight subsectors and express delivery is included.
18 The problem is they consider us, by putting us as
19 handling of postal items, it makes us seem like we're
20 a postal service. We're not a postal service. The
21 private sector invented the business. We have no
22 interest in delivering first class mail and taking on

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1 monopoly type services.

2 It's similar to postal administrations are
3 now getting into financial services. Now you see ATMs
4 at post offices. Does that mean financial services
5 are now postal service? We don't think so. And I
6 think the financial community would argue against that
7 as well. Just as we're not a postal service, just
8 because it's more profitable for post to do express
9 delivery services or financial services, when they get
10 into our backyard, that doesn't make it a postal
11 service.

12 The other problem is that right now I
13 think there are between six to eight full commitments
14 on postal services. Countries do not want to
15 liberalize their post period. We've heard it in
16 meetings in Geneva time and time again. So we are
17 trapped in the EU model as being a postal service.
18 We're not going to get any commitment and that's of no
19 use to us.

20 So what we're trying to do is work some
21 sort of or work with the governments on some sort of
22 structure that everyone can agree on that other

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1 countries who have not focused on this yet can look
2 and see, okay, there's a compromise structure that we
3 can base our offers on. And that would be using the
4 U.S. and EU models, using the EU model but instead of
5 having us under handling of postal items, you would
6 have maybe an A postal item, B express delivery so
7 that countries could then go and using the U.S.
8 definition of express, so then countries could avoid
9 A and go directly to B and make the commitments in
10 express delivery which we think they will. We're in
11 over 210 countries and territories throughout the
12 world. We're not a new service in any of those
13 countries.

14 So there's no threat from us in that we're
15 a new service, we're unknown or anything like that.
16 And we think countries will make the commitments in
17 express as opposed to postal.

18 CHAIR SURO-BREDIE: Thank you very much
19 for your testimony.

20 MR. SPENCE: Thank you.

21 CHAIR SURO-BREDIE: The panel will now be
22 joined by Mark Linscott, the Deputy Assistant U.S.

1 Trade Representative for Environment. Our next
2 witness is David Waskow, Friends of the Earth. I hope
3 I pronounced your name correctly. Thank you for
4 coming.

5 MR. WASKOW: Good morning, thank you for
6 the opportunity to address you. We are deeply
7 concerned as are other environmental organizations
8 that negotiations on services will have far-reaching
9 implications for domestic regulations to protect
10 citizen's health, safety and the environment, and also
11 possibly the achievement of other policy objectives.
12 Over two-thirds of all services trade occurs in
13 sectors with substantial environmental impacts,
14 including sectors that are currently under discussion
15 at the WTO such as waste disposal and sanitation,
16 water provision, energy, tourism, transport,
17 construction and distribution including mass retail.
18 These sectors are all under consideration in the
19 request/offer process currently.

20 If the GATS negotiations do lead to
21 expanded sectoral coverage, this will raise a host of
22 concerns relating to environmental and other

1 regulatory policies. And given these concerns, we
2 believe that the U.S. and other WTO members should
3 conduct a thorough and comprehensive assessment of the
4 environmental, social and developmental implications
5 of services trade liberalization under the GATS and
6 feed these results into the assessment discussions in
7 the Council for Trade in Services. We have a
8 particular concern that the U.S. has entered into the
9 request-offer process before that process is fully
10 informed by the environmental assessments mandated by
11 the letter and spirit of Executive Order 13141.

12 In addition, given the potential impact of
13 GATS commitments on environmental concerns, including
14 domestic legal and regulatory regimes, we believe that
15 the WTO and its member countries should make all
16 requests and offers available to the public. At
17 minimum, each country should make public the request
18 and offers it has made or received in the form of a
19 compilation. And I would just say in response to a
20 question that was made earlier, that there is quite a
21 distinction, I think, between the summaries that were
22 publicly provided and the actual requests and offers

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1 and the detail that they provide.

2 In addition to a number of concerns
3 regarding particular GATS commitments that I will
4 address, we believe it's impossible to anticipate in
5 advance all the legal and regulatory impacts of
6 services liberalization in environmentally sensitive
7 sectors. And given these potential legal and
8 regulatory impacts, we are deeply concerned about the
9 lack of an environmental exception in the GATS
10 comparable to GATT Article XX(g) for measures relating
11 to the conservation of exhaustible natural resources.

12 The inclusion of a provision at least
13 equivalent to Article XX(g) is essential to ensuring
14 that measures to protect the environment are not
15 inappropriately or unintentionally undermined by GATS
16 disciplines. In part, this protection of exhaustible
17 natural resources such as water, air and energy
18 resources, should be addressed in the GATS because of
19 the potential for sectors such as environmental
20 services and energy services to have impacts on those
21 sectors. Most importantly, however, the value of this
22 exception has been demonstrated in GATT cases before

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1 the WTO, including the Shrimp-Turtle case. The
2 language in XX(g) which legitimizes measures relating
3 to an environmental aim, provides for a substantially
4 more inclusive use of the exception than the currently
5 existing narrow necessity language in GATS Article
6 XIV(b).

7 In addition to the long-term solution
8 articulated here, we suggest that the U.S. should also
9 take immediate action to address these concerns, in
10 particular by pursuing a strategy of including a
11 horizontal commitment, and encouraging other countries
12 to do so as well, that essentially replicates GATT
13 Article XX(g) in GATS commitments.

14 In regard to particular GATS disciplines,
15 we believe that expanded market access and national
16 treatment commitments in environmentally sensitive
17 sectors could place undue restraints on regulatory
18 action designed to protect the environment and our
19 concerns are particularly significant for sectors in
20 which countries have presented initial expression of
21 interest for increasing market access including all
22 those that I mentioned above.

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1 Market access commitments which
2 essentially address quantitative limitations and
3 restrictions, could restrict the ability of state,
4 local and federal governments to place appropriate
5 quantitative limitations on environmentally harmful
6 service operations. In the energy sector, for
7 example, such commitments could conflict with
8 quantitative limitations involving exploration
9 including the use seismic testing trucks, pipeline
10 size, right-of-way and throughput, truck transport,
11 bulk storage and refining and electricity source
12 requirements. In the environmental services sector,
13 market access commitments could conflict with
14 quantitative limitations involving waste disposal
15 including hazardous waste and other landfills, waste
16 disposal in rivers, oceans and other bodies of water,
17 sewerage, garbage incineration, and transboundary
18 waste transport.

19 In addition, national treatment
20 commitments could limit regulatory action that creates
21 a disadvantage for foreign service providers. The
22 reach of national treatment is extremely broad under

1 the GATS. Discrimination occurs not only when a
2 regulatory action intentionally treats a foreign
3 service provider differently, but whenever regulation
4 "modifies the conditions of competition in favor of
5 services or service suppliers of the domestic party."
6 For example, the Canadian government has recently
7 indicated its concerns regarding the discriminatory
8 impact of U.S. renewable portfolio standards for
9 electricity that limit or exclude hydropower.
10 Similarly, reasonable and necessary measures to reduce
11 alien invasive species risks may have a differential
12 impact on transport providers from different regions.

13 We are also concerned about proposals to
14 strengthen the regulatory disciplines in Article VI.4
15 of the GATS and we urge that no further disciplines be
16 negotiated under that article to strengthen necessity
17 or additional proportionality test disciplines. We
18 are also concerned about possible implications of
19 transparency provisions and although these may be
20 helpful in some regards, they could also act in some
21 respects to constrain the ability of state and local
22 governments to quickly and effectively implement

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1 regulations that are needed. And we hope that the
2 U.S. government will carefully consider and walk
3 carefully through the potential implications of
4 transparency.

5 Finally, we are also concerned that the
6 existing exception in GATS Article I for services
7 supplied in the exercise of governmental authority is
8 insufficient to protect from challenge the provision
9 of basic and essential public services such as energy,
10 water, transport, communication and public health. We
11 believe that what is necessary is to clarify this
12 exception to clearly protect such basic and essential
13 public services when that is appropriate.

14 And lastly, let me just conclude, by
15 mentioning environmental services in particular which
16 were highlighted in the DOHA Declaration. Paragraph
17 31 of the Declaration refers to these environmental
18 services as part of a broader trade and environment
19 agenda but with a view to enhancing the mutual
20 supportiveness of trade and environment.

21 We do welcome efforts to negotiate
22 reductions in barriers to environmentally beneficial

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1 environmental services. However, we are also deeply
2 concerned that the current classification for those
3 services in the GATS W/120 will impede the aim of
4 providing environmental benefit as established in the
5 DOHA Declaration. By focusing on service sectors such
6 as sewage, refuse disposal and sanitation, the current
7 classification does not provide clear environmental
8 health and safety benefits because these sectors often
9 can have the opposite effect. Refuse disposal done
10 wrong is far more harmful than refuse disposal done
11 right, of course, and questions such as inappropriate
12 landfills have already been raised in a number of
13 developing countries around the world as has
14 incineration.

15 And I would just note here that the
16 earlier comment from CSI about technology neutrality
17 in the environmental services sector does concern me
18 a great deal because, in fact, there is a great
19 difference between different kinds of technologies in
20 environmental services. And I would note that it's
21 not only the case that there are appropriate,
22 inappropriate ways of disposing of refuse but there

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1 also is a great distinction between end of pipe
2 services that deal with garbage once it's been,
3 garbage loosely defined, once it's been created and
4 those services that are preventative in nature that
5 essentially prevent pollution from occurring in the
6 first place which are very helpful environmental
7 services.

8 Let me conclude there and just note that
9 in this area, we hope that the classification will be
10 done in such a way and offers made in such a way that
11 these concerns about environmental services will be
12 addressed.

13 CHAIR SURO-BREDIE: Thank you, Mr. Waskow.
14 The first question from the panel will be posed by the
15 Environmental Protection Agency, Mr. Freedman.

16 MR. FREEDMAN: Thank you and thank you,
17 Mr. Waskow, for your interesting testimony today.
18 Your testimony highlights the importance of factoring
19 in the environmental, social and developmental
20 implications of services trade liberalization under
21 the GATS. Particularly with respect to environmental
22 consideration, what role, if any, would you see for

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1 the review provided by Paragraph 51 of the DOHA
2 Declaration to be conducted by the Committee on Trade
3 and Environment.

4 MR. WASKOW: Well, we are hopeful that
5 Paragraph 51 will provide an opportunity, a serious
6 opportunity, across the board for all aspects of WTO
7 negotiations for the member countries to address the
8 environmental implications of the negotiations that
9 they are undertaking. I would say, in particular in
10 the GATS context, that the problem from our
11 perspective is that those negotiations have moved
12 forward now without the benefit of the Paragraph 51
13 review and also without the benefit of a review in the
14 United States under Executive Order 13141.

15 MR. FREEDMAN: Thank you.

16 CHAIR SURO-BREDIE: The next question will
17 be posed by USTR, Mr. Linscott.

18 MR. LINSCOTT: Thank you and I, too, would
19 like to thank David Waskow for his testimony. First,
20 I'd like to start by noting that the United States has
21 already expressed some misgivings regarding proposals
22 related to necessity under Article VI.4 of the GATS,

1 both in the working party and on domestic regulations
2 as well as the Committee on Trade and Environment as
3 part of its review under Paragraph 51 of the DOHA
4 Declaration.

5 Yet Friends of the Earth goes further in
6 suggesting that proposals to enhance the transparency
7 of domestic regulatory practices are somehow
8 dangerous. My first question is whether you see
9 opportunities in these negotiations for increasing
10 participation in regulatory activities for all
11 interested constituencies including representatives of
12 civil society and I did note that you referred to the
13 potential for some benefits in your oral remarks.

14 The second question is how can greater
15 transparency be equated with impeding democratic
16 processes. This was not something you noted in your
17 oral remarks but was a comment in your written
18 testimony. Thank you.

19 MR. WASKOW: First, let me note that I
20 think it is important and very helpful that USTR has
21 raised serious concerns about the proposals that the
22 EU and others have put forward regarding elaboration

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1 and necessity testing, and in particular,
2 proportionality testing.

3 As far as transparency is concerned, I
4 think if it is very clear in the outcomes of
5 negotiations that this is an effort to provide
6 transparency and an opportunity for input and
7 participation by all constituencies, then, in fact,
8 this could be a helpful approach to pursue. The
9 concern with the potential for transparency to impede
10 regulatory efforts emerges from a concern that, in
11 fact, it could, if done wrong, lead to a situation in
12 which, especially at the local and state level,
13 governments face burdens and barriers in actually
14 implementing and effectively doing so, regulations
15 that they need to.

16 And so I think it is of utmost importance
17 and, therefore, as I said earlier, it's extremely
18 important for the U.S. government to walk carefully in
19 pursuing this approach to make sure that this is not
20 done in a way that would impede that kind of
21 regulatory effort, especially at the local and state
22 level. And I would add also in developing countries

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1 where the ability to produce this kind of
2 documentation that might be sought under a
3 transparency provision might be quite onerous.

4 MR. LINSKOTT: Thank you, that was quite
5 helpful.

6 CHAIR SURO-BREDIE: Our next question will
7 be posed by Peter Collins of USTR.

8 MR. COLLINS: Thank you. You've discussed
9 the importance of classification of environmental
10 services. A GATS classification system can be viewed
11 as a tool for comprehensively identifying all services
12 activities. While many participants in negotiations
13 have acknowledged some shortcomings in the system in
14 terms of specifying a wide array of environmental
15 services, it would be helpful to know on what basis
16 you see the current classification as limited to end
17 of pipe clean up activities while excluding pollution
18 prevention services. For example, could the
19 request/offer negotiating process still provide scope
20 for establishing priorities that focus on those
21 environmental services that are clearly
22 environmentally beneficial?

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1 MR. WASKOW: Well, the current
2 classification, I suppose, does have a fourth category
3 that would permit pollution prevention as a GATS
4 subsector. However, it's clear that the thrust of the
5 current classification is the three sectors that are
6 explicitly mentioned, all of which essentially have to
7 do with waste and refuse and pollution once it is
8 actually created, therefore, end of pipe.

9 I think that it is quite possible to add
10 many subsectors that would address pollution
11 prevention and I believe both the U.S. and the EU have
12 proposed doing so. Whether it's possible to somehow
13 prioritize though, prioritize those, however, I'm not
14 sure and I suppose that would be a question, in a
15 sense, that I would also ask of USTR, whether there is
16 some mechanism, and I don't know of one really in the
17 current classification scheme, to create priorities
18 among subsectors.

19 Having said that, let me say that it is
20 still a concern that the subsectors, the current
21 subsectors are there, whether or not other subsectors
22 are added to the classification. And that's because,

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1 as I quickly alluded to, you have a number of refuse
2 disposal sectors such as, refuse disposal activities
3 and sewage activities that can be quite harmful such
4 as landfills, incineration, garbage incineration and
5 sewerage that is done inappropriately. And so if
6 these are liberalized, and particularly if they would
7 be liberalized in a technological neutral manner, many
8 of the concerns regarding impact of GATS obligations
9 I think, could easily arise.

10 And I'll just take one example, but this
11 is just one example, and that's landfills. Currently
12 the permitting process throughout the country at the
13 local level in the United States is to permit
14 landfills with clear quantitative limitations on the
15 amount of waste that can be disposed of, on the height
16 often of the landfill and so forth. Those, to me,
17 would seem to run afoul of Article XVI and of the
18 quantitative limitation, the prohibition on the use of
19 numerical limits on service output in Article XVI to
20 be precise.

21 And so although I think some
22 prioritization could be done perhaps in the

1 classification of the environmental services, I think
2 that nonetheless the fact that those services remain,
3 the refuse disposal and so forth, services without any
4 limitations to ensure that they are done in an
5 environmentally beneficial way, leaves a significant
6 problem.

7 CHAIR SURO-BREDIE: Any questions? Thank
8 you very much.

9 MR. WASKOW: Thank you.

10 CHAIR SURO-BREDIE: Our last witness is
11 Ray Sander, Vice President of New York Life
12 International.

13 MR. SANDER: Thank you for this
14 opportunity. New York Life is a global subsidiary of
15 New York Life Insurance Company, the largest U.S.
16 mutual insurer with more than 178 billion in assets
17 under management and more than 150 years of
18 experience. Our colleagues in operation in Argentina,
19 Hong Kong, India, Indonesia, Mexico, Philippines,
20 South Korea, Taiwan and Thailand. We have a
21 representative office in Vietnam and are in the
22 process of opening a joint venture life insurance

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1 operation in China.

2 I appreciate this opportunity to provide
3 input to our trade negotiators on the use of, on the
4 services talks at the WTO. I'd like to associate
5 myself with remarks made by my colleague from CSI and
6 New York Life's been very active in the Coalition of
7 Services Industries and American Council of Life
8 Insurers.

9 And this morning I'd like just briefly
10 address three areas, financial services in the DOHA
11 Round, technical assistance in capacity building and
12 the Model Schedule in insurance.

13 The mission of world finance is well
14 defined and has remained fundamentally constant for
15 several centuries. It is to create the foundation for
16 economic growth. Financial institutions provide the
17 means for accumulating and protecting capital and
18 directing it into productive investments. In doing
19 so, these financial institutions create wealth, create
20 jobs, create the infrastructure to support the
21 activity of the non-financial economy.

22 Life insurers like New York Life form a

1 key component of the international finance. We
2 provide long-term capital that is invested for twenty
3 or thirty years to match the maturities of our long-
4 term obligations to our policyholders. This is not
5 hot money for short-term speculation. It is the
6 investment capital for the infrastructure, housing and
7 projects with useful lives that span generations.

8 Our industry operates in an increasingly
9 global environment as national economies become more
10 integrated and capital becomes more mobile. As a
11 major international life insurance company, we view
12 the world not as a set of national markets for our
13 services and investments, but as a network of
14 interconnected markets. We value the DOHA Round as an
15 important and timely opportunity to increase the
16 efficient operation of that global financial network.

17 To maximize this opportunity for the
18 benefit not only of businesses but of consumers and
19 national economies around the world, trade negotiators
20 must consider more than market access as their measure
21 of success. Our industry is among the most heavily
22 regulated in the world. That is not surprising since

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1 our business has profound effects not just on our
2 customers and their families but also on the stability
3 of national financial systems. Given the regulatory
4 environments that we operate, the strength,
5 predictability and transparency of regulatory
6 authorities are crucially important to our mission of
7 supporting economic growth.

8 Thus, for many of the highly regulated
9 services, achieving market access is just the
10 beginning. The implementing regulations that follow
11 market access commitments are the real tests of market
12 opening. And the ability of regulatory authorities to
13 establish and maintain world-class professionals and
14 regulatory regimes are the ultimate test of any trade
15 negotiation.

16 We recognize that all countries are not
17 equally prepared to establish and manage these
18 regulatory institutions. My company is actively
19 engaged in capacity building in a variety of ways. We
20 sponsor training programs for regulatory officials
21 from emerging markets, exposing them to the best
22 practices of developing economies. We work

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1 cooperatively with U.S. regulators and the U.S.
2 government. In addition, we cooperate with private
3 sector bodies such as the American Council of Life
4 Insurers Foundation. We work closely with insurance
5 supervisors around the world, advocating the
6 acceptance of international standards through the
7 International Association of Insurance Supervisors.

8 Our programs supplement the broad
9 governmental efforts by the U.S. and other developed
10 countries to build capacity in the developing world to
11 negotiate and implement trade policy. We strongly
12 support the growing array of technical assistance
13 activities for current and prospective WTO members.
14 We urge USTR to continue to support these efforts for
15 both current WTO members and especially for high
16 priority prospective WTO members like Vietnam. These
17 actions increase the ability of all economies to offer
18 access to well-regulated domestic financial services
19 markets.

20 How should the U.S. trade negotiators
21 proceed to achieve broad, deep insurance commitments
22 in the WTO? Understanding the often highly

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1 specialized nature of the insurance industry, we in
2 the private sector have prepared a unique approach to
3 which we call the Model Schedule. The Model Schedule
4 represents the consensus view of the entire U.S.
5 insurance industry, including life, property and
6 casualty, brokers and reinsurance on all the elements
7 needed for success in the negotiations.

8 The Model Schedule takes an integrated
9 approach to market access. It includes improvements
10 in traditional market access issues such as equity
11 limitations and the form of establishment. It also
12 includes the equally important improvements in
13 transparency and best practices in insurance
14 regulation which upon implementation, build a strong,
15 open and predictable system of regulation. The Model
16 Schedule brings together in one document the market
17 access issues and best regulatory practices that our
18 industry wants to see included in the detail in the
19 Additional Commitments column of the schedules of
20 specific commitments.

21 I encourage all members of the Committee,
22 if you haven't had a chance to review the Model

1 Schedule, please do so and I will be happy to make
2 copies available to the Committee.

3 Another unique feature of this document is
4 the consensus built by our industry with our
5 counterparts in Europe, Japan and Canada. The
6 insurance industry in each of the jurisdictions is
7 conveying these same elements to their governments,
8 just as I'm doing with you today. We believe that
9 this industry coordination provides U.S. trade
10 negotiators with a considerable base of support to
11 promote the integrated framework of market access and
12 regulatory commitments in the DOHA Round. By
13 recognizing the nexus between market access and best
14 regulatory practices in the insurance sector through
15 meaningful GATS commitments, WTO members will be able
16 to ensure open, competitive and sound markets. Thank
17 you.

18 CHAIR SURO-BREDIE: Thank you very much.
19 Our first question will be asked by the Department of
20 Commerce.

21 MS. HAGIGH: Thank you. Your testimony
22 discusses the importance of capacity building and

1 technical assistance in the area of regulation of
2 insurance, could you provide information on the
3 experience of your company or the experience of one or
4 more of the cooperating bodies mentioned in your
5 testimony in providing such technical assistance in
6 one or more countries. What was the impact of this
7 technical assistance?

8 MR. SANDER: I can use the example of
9 Vietnam as perhaps the most vivid one for our company
10 and for a number of U.S. insurance companies. There
11 is no actuary science established in Vietnam. There
12 is no one who has the ability to perform the actuarial
13 requirements that any regulator of insurance would
14 need to have. So many companies like New York Life
15 are working with administrative finance in Vietnam to
16 help administrative finance to develop the capacity so
17 that they can open their market in accordance with the
18 bilateral trade agreement that USTR negotiated with
19 Vietnam and so that they're in a position to implement
20 the world class regulations that the IAIS and others
21 have suggested to Vietnam so they can meet their
22 obligations.

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1 Recently we had a member of administrative
2 finance here in this country for a six week training
3 course, training that was, some of it took place in
4 Kansas City where the National Association of
5 Insurance Commissioners has their training center plus
6 familiarization with a number of the U.S. regulators
7 during the time that that person was here. And that's
8 the kind of training that we've been engaged in with
9 a number of people within the industry of finance.

10 The foundation that I have referred to in
11 my written statement, the American Council of Life
12 Insurers Foundation, has sponsored, in cooperation
13 with the World Bank, a number of seminars in China and
14 in Brazil where we have attempted to bring together
15 experts from around the world to make sure that
16 there's great representation across both developing
17 and developed economies on the panels so that people
18 can get the benefit of what best practices are
19 involved in establishing a reliable regulatory regime.

20 The impact of this is a little bit more
21 difficult to address. Certainly if, an indicator is
22 that people are willing to participate in these, the

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1 impact is positive because we had to have a very
2 selective approach on this. A number of countries
3 have come forward and asked for our assistance. We've
4 been working with the Department of Commerce in their
5 program to try to work together to identify priority
6 countries and priority areas where this technical
7 assistance capacity building is best directed.

8 CHAIR SURO-BREDIE: Thank you very much.
9 Mr. Collins?

10 MR. COLLINS: Thank you. Your testimony
11 notes the importance of regulation in this sector.
12 Due to the impact of the insurance business on
13 customers, their families and the stability of the
14 national financial system, could you please elaborate
15 on how your objectives and those means of achieving
16 those objectives. If you can, will you describe the
17 regulation and the cite.

18 MR. SANDER: The reason that our industry
19 is as heavily regulated is that unlike a business to
20 business service where there's a presumption that
21 we're talking to people of equal levels of
22 sophistication, insurance has been one of those

1 services where it's felt that the potential customer
2 needs some protection, some assistance. And that's
3 been the principle basis for the regulatory philosophy
4 that's been approached across the board with insurance
5 in almost every country. That you have a
6 sophisticated company, a sophisticated product and you
7 have a customer who may not have the equal
8 sophistication. And so you have to make sure the
9 customer's interests are protected.

10 New York Life works extensively here, as
11 most insurance companies do, with the state regulators
12 to ensure that we have a strong regulatory regime
13 here. Because it's in our interest that the
14 regulations are strong because if something goes wrong
15 in our industry, even if it's just one company, the
16 entire industry is damaged by that.

17 And this is equally true overseas. And
18 the vehicle that we try to encourage is the
19 International Association of Insurance Supervisors,
20 the IAIS, which is one of the organizations that's
21 recognized by the World Bank, the World Bank looks to
22 in making assessments of countries insurance

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1 regulations and the adequacy of those regulations and
2 we believe that the IAIS serves as a useful model for
3 especially developing countries as they look to see
4 how they can structure their regulatory regime.

5 If they implemented the IAIS's regulations
6 and its approach to regulation, policyholders and the
7 financial systems under which those regulations would
8 be implemented would be well protected. I don't know,
9 does that respond fully to your question?

10 MR. COLLINS: Just one follow up question
11 and it relates to comments made earlier this morning.
12 How do you see the relationship between the objectives
13 that your company and the industry has proposed in the
14 Model Schedule, which would be WTO commitments, with
15 what you've just described as the role of the IAIS and
16 the regulators.

17 MR. SANDER: Every regulator wants to
18 protect their prerogatives in the area that they have
19 been given responsibility by their parent government.
20 We believe that because we've gone to best practices
21 that are endorsed by the IAIS and have taken the most
22 important elements of the GATS, which the members of

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1 the WTO have already agreed to, that by joining those
2 together, that we are not in any way circumscribing
3 the individual regulator's prerogatives.

4 And, in fact, some regulators have come to
5 us and suggested that it would be helpful to them to
6 try to implement the IAIS regulations if there was
7 some additional pressure coming from other areas in
8 their own capitals in support of this because
9 frequently the local insurance regulator doesn't have
10 the full attention of their government. And if there
11 was a trade commitment being made by their economics
12 or trade official that was consistent with their
13 interest, that this would create a sufficient
14 incentive for some governments to move forward on the
15 implementation of regulations that right now only the
16 insurance regulator is supporting.

17 I'm sure that there might be some
18 insurance regulators who would prefer not to have any
19 regulations be part of trade negotiations but for us,
20 the true test of a trade, a successful trade
21 agreement, is the regulations and the ability for
22 countries to implement them. And therefore, we feel

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1 that the nexus is a very close nexus and it's not a
2 major step, not a major step in increasing the agenda
3 of what you will be negotiating.

4 CHAIR SURO-BREDIE: Thank you very much,
5 Mr. Sander. This hearing is adjourned.

6 (Whereupon, the foregoing matter was
7 concluded at 11:46 a.m.)

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